

2-51. Class I Administrative Penalty Actions

1. AUTHORITY. Pursuant to Sections 309(g) and 311 of the Clean Water Act, the authority to:

- a. Act as the complainant in a Class I administrative penalty action under the CWA.
- b. Conduct proceedings, recommend the form of final Agency action, issue subpoenas and perform all the presiding officer functions set forth in applicable Agency guidance or regulations governing the administration of Class I administrative penalty actions under the CWA.
- c. Represent the complainant before a presiding officer in a Class I administrative penalty proceeding under the CWA.
- d. Issue an order on consent between the Agency and a respondent resulting from the initiation of a Class I administrative penalty action under the CWA.
- e. Act as deciding official in a contested or default Class I administrative penalty action under the CWA, and assess a penalty in such a proceeding.
- f. Review *sua sponte* any exercise of the authority described in paragraph 1.e. in a contested or defaulted action.

2. TO WHOM RE-DELEGATED.

- a. The authority in paragraph 1.a is re-delegated to the Director, Superfund Division, for actions under Section 311, and to the Director, Water Division, for actions under Sections 309(g) and 311. The Director, Superfund Division, hereby re-delegates his authority to the Chiefs of Emergency Response Branches and the Enforcement & Compliance Assurance Branch in the Superfund Division, but only for Class I Spill Prevention, Control and Countermeasure (SPCC) actions under Section 311.
- b. The authority in paragraph 1.b is re-delegated to the Regional Judicial Officer.
- c. The authority in paragraph 1.c., which the Assistant Administrator for Enforcement re-delegated to the Regional Counsels on October 29, 1991, is hereby re-delegated to all attorneys in the Office of Regional Counsel.

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- d. The authority in paragraph 1.d is re-delegated to the Director, Water Division, for actions under Sections 309(g) and 311, and to the Director, Superfund Division, for actions under Section 311. The Director, Superfund Division, hereby re-delegates his authority to the Chiefs of the Emergency Response Branches and the Enforcement & Compliance Assurance Branch in the Superfund Division, but only for Class I Spill Prevention, Control and Countermeasure (SPCC) actions under Section 311.

3. LIMITATIONS.

- a. The division of authority between the Director, Water Division, and the Director, Superfund Division shall determined by a Memorandum of Agreement between Water Division and Superfund Division.
- b. As required by paragraph 3.d of EPA Delegation 2-51, in exercising the authorities described in paragraph 1.e, the Regional Administrator or his/her delegatee shall provide the Chief Judicial Officer with a timely copy of the decision in a contested or defaulted action so that there is an opportunity for a *sua sponte* review by the Chief Judicial pursuant to paragraph 1.f.
- c. The Division Directors or their delegates must consult with the Regional Counsel or designee and obtain his/her concurrence on the legal sufficiency of documents before exercising authority under paragraphs 1.a. or 1.d.

4. RE-DELEGATION AUTHORITY.

- a. The Directors of the Water Division and the Superfund Division may re-delegate the authorities that they have under paragraphs 1.a. and 1.d. to the Branch Chief level.
- b. The delegation from the Administrator, dated May 11, 1994, authorizes the Regional Administrator to re-delegate the authorities of paragraph 1.e on a case-by-case basis to the same person who is delegated the authorities of paragraph 1.b.

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- c. None of the other authorities delegated pursuant to this delegation may be re-delegated, except by the Regional Administrator (or, in the case of the authorities of paragraph 1.c, by the Regional Counsel).

5. ADDITIONAL REFERENCES.

- a. Section 309 of the Clean Water Act, 33 U.S.C. § 1319, as amended by the Water Quality Act of 1987.
- b. Section 311 of the Clean Water Act, 33 U.S.C. § 1321, as amended by the Oil Pollution Act of 1990.
- c. EPA Delegation 2-51, *Class I Administrative Penalty Actions*.
- d. Agency guidance or regulations governing Class I administrative penalty actions under the Clean Water Act.
- e. Agency guidance regarding Regional-Headquarters Coordination of Initial Administrative Penalty Enforcement Actions under the Oil Pollution Act of 1990.